

**HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY**

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Writ Petition No. 17808 of 2007

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Between:

B.Balaji & another

... Petitioners

And

Greater Hyderabad Municipal Corporation,
Rep. by its Deputy Commissioner,
Kapra Circle, Hyderabad & another

... Respondents

:: ORDER ::

Counsel for the petitioners : Shri Karra Srinivas

Counsel for respondent No.1 : Shri P. Radha
Krishna

August 30, 2007

Per G.S. SINGHVI, CJ

The petitioners, who have already filed suit (O.S. No. 842 of 2007) for recovery of possession of the subject land in the Court of I Additional Senior Civil Judge, Ranga Reddy District at L.B. Nagar, Hyderabad and have succeeded in persuading the concerned Court to pass an order of status quo, have now invoked jurisdiction of this Court under Article 226 of the Constitution of India for issue of a mandamus to the functionaries of Greater Hyderabad Municipal Corporation to take action against respondent No.2 by alleging that the said respondent has made unauthorized construction in plots bearing No.1,

2, 3 and 5 of Survey No. 757 (Part) of Prathampur Colony, Kapra Village, Ranga Reddy District.

Shri K. Srinivas, learned counsel for the petitioners, made efforts to convince us that the subject matter of the suit has nothing to do with the unauthorized construction raised by respondent No.2 in the property described hereinabove and, therefore, the pendency of the suit should not be made a ground for non-suiting his clients, but we have not felt convinced.

Though the drafting of the writ petition has been so articulated as to give an impression that the cause for which the petitioners have sought intervention of this Court is substantially different than the issue raised in the civil suit, wherein respondent No.2 has been impleaded as a defendant, on a careful scrutiny of the material placed before this Court, we are convinced that there is no justification to allow the petitioners to bypass the remedy available to them before the civil court. The similarity of the claim made in the two litigations is evinced from Clause VII and Schedules A and B of the plaint filed by the petitioners in the Court of I Additional Senior Civil Judge, Ranga Reddy and paragraphs 5 and 6 of the writ affidavit, which are extracted below:

Clause VII and Schedules A and B of the Plaint

VII. VALUATION & COURT FEE:

The relief of recovery of possession of plaintiff No.1 is valued at Rs.1,35,000/- which is half of the marked value of encroached portion of Schedule A property (i.e. 67.5 sq. yards x Rs.4,000 = Rs.2,70,000/-) and court fee of Rs. /- is paid and relief of recovery of possession of plaintiff No.2 is valued at Rs.1,05,000/- which is half of the marked value of encroached portion of Schedule B property (i.e. 52.5 sq. yds. x Rs.4000/- = Rs.2,10,000/-) and court fee of Rs. /- under Section 28 of A.P. C.F. & S.V. Act. The reliefs of mandatory injunction sought by the plaintiffs is valued at Rs.1,000/- each and separate court fee of Rs.111/- each (i.e. Rs.222/-) is paid under Section 26 (C) of APCF & SV Act and the total court fee of

Rs. /- in lieu of court fee stamps has been paid in cash vide
challan No. Dt. Apr., 2007 in SBH, RR District Courts
Complex.

It is therefore prayed that this Hon'ble Court may be pleased to
pass a judgment and decree in favour of the plaintiffs against the
defendant for:

- a) delivery of possession of the encroached portion of suit
 scheduled property back to the plaintiffs after evicting the
 defendant therefrom;
- b) mandatory injunction directing the defendant to remove
 unauthorised structures in the suit scheduled properties;
- c) Costs of the suit; and
- d) Any other relief or reliefs as this Hon'ble Court may deem fit
 and proper in the circumstances of the case."

SCHEDULE 'A' PROPERTY

All that the residential open plot bearing Nos. 3 (part) and 4 in
Survey No.757 (Part) admeasuring 300 sq. yards or 250.8 sq. mtrs.
situated at Kapra Village and Municipality, Keesara Mandal, Ranga
Reddy District being bounded by

North:	Road
South:	Plot No.5
East:	Road
West:	Rem. Part of Plot No.3

SCHEDULE 'B' PROPERTY

All that the residential open plot bearing No. 5 in Survey No.757
(Part) admeasuring 233.83 sq. yards or 195.06 sq. mtrs. situated at
Kapra Village and Municipality, Keesara Mandal, Ranga Reddy
District being bounded by

North:	Plot Nos.3 and 4
South:	Owners land
East:	20' Road
West:	Plot No.1

Paragraphs 5 and 6 of the writ affidavit

5. Hence, it is prayed that this Hon'ble Court may be pleased to
declare the action of the 1st respondent in not taking action
regarding the unauthorised construction of the 2nd respondent in
Plot No.1, 2, 3 and 5 of Sy. No.757 (Part) of Prathampur Colony,
Kapra Village, R.R. District as illegal, arbitrary and unjust by
issuing appropriate writ or direction more particularly in the nature

of writ of mandamus and pass such other order or orders as this Hon'ble Court deem fit and proper.

6. It is further prayed that this Hon'ble Court may be pleased to direct the 1st respondent to take immediate action to dispose of the representation dt.9.5.2007 filed by the petitioner, pending disposal of the above writ petition and pass such other order or orders deemed fit and proper in the circumstances of the case.

Since the petitioner has knowingly and consciously decided to avail remedy by filing civil suit, he cannot be permitted to invoke jurisdiction of the High Court under Article 226 of the Constitution of India in relation to the same or related subject matter.

With the above observations, the writ petition is dismissed leaving the petitioners free to amend the suit by impleading Greater Hyderabad Municipal Corporation as party and also making appropriate prayer in the main case as well as the interim application.

As a sequel to dismissal of the writ petition, W.P.M.P.No.22824 of 2007 filed by the petitioners for interim relief is also dismissed.

G.S. SINGHVI, CJ

C.V. NAGARJUNA REDDY, J

August 30, 2007

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